

Testimony of Robert G. Card
Under Secretary, U.S. Department of Energy
Before the Senate Energy and Natural Resources Committee

November 21, 2003

Thank you for the opportunity to testify about the Department of Energy's implementation of the Energy Employees Occupation Illness Compensation Program Act of 2000 (EEOICPA). Broadly speaking, DOE has two areas of responsibility under EEOICPA – (1) gathering employment and workplace information to assist the Department of Labor (DOL) and the Department of Health and Human Services (HHS) with their work in carrying out the EEOICPA Part B compensation program, and (2) implementation of EEOICPA Part D, which focuses on providing assistance to DOE contractor workers in their efforts to obtain State workers' compensation benefits. My testimony today will primarily focus on DOE's activities under Part D.

DOE has heard loud and clear that Congress is frustrated with the pace at which we are processing Part D applications. We too are greatly concerned. Progress has been made in gathering records and processing cases. When Secretary Abraham spoke of this program last spring, we were processing less than 20 cases for physician panels a week. We have now exceeded 20 cases per day. However, in spite of these significant improvements, DOE simply has not processed cases with the speed or efficiency desired by the Congress or by Secretary Abraham. Therefore, I want to be very specific in my remarks to you today. The Department did not react quickly enough when it became apparent that the EEOICPA was a much larger program than originally anticipated. More resources are required. Therefore, we will be providing a request for approval of another transfer of funds to the appropriate Congressional committees very shortly. I ask for your timely

support of this transfer of funds. Also, I am asking that the Committee support changes to the statute that would assist us in expediting the physician panel process even further.

I have included an Attachment to my testimony that provides more detail concerning the issues I will discuss today, including some of the original expectations of the program, processes used by DOE and DOL to implement EEOICPA, our progress to date, and what we have learned from outside reviews of our work. I have also included information about the current safety record of DOE for your information.

Part D of EEOICPA sets up a somewhat cumbersome and complicated process that DOE's contractor workers must navigate if they are to benefit from Part D of the program. If a DOE contractor worker believes they may have an illness caused by exposure to a toxic substance while working at a DOE facility, the law allows the worker to file an application with DOE for assistance in filing a state workers' compensation claim. After determining that the applicant is eligible for the Part D program, DOE gathers records from around the country relating to the workers' occupational histories and their health conditions, and then refers the application to a panel of doctors. The physician panel then determines whether the worker's illness arose from exposure to a toxic substance while working at a DOE facility.

If the panel finds in the affirmative and DOE finalizes the finding, the workers are notified of the favorable finding. The workers may choose to file a State workers' compensation claim. Of course, the workers are free to file with their State workers' compensation office at any time, but hopefully the case file put together for the worker by DOE plus the positive physician panel finding will provide the worker a better chance of receiving benefits through their State workers' compensation agency. The statute then

allows DOE, to the extent permitted by law, to direct the contractor who employed these workers not to contest State workers' compensation benefits for workers that have received a positive finding. Individual States' workers' compensation laws and rules determine benefits for that particular state. The EEOICPA statute does not provide for direct monetary benefits to Part D applicants from the Federal government.

At the present time, DOE has received more than 20,000 Part D applications with applications continuing to be filed at approximately 150 per week. In addition, there are currently more than 40,000 applications filed under Part B, the DOL Federal entitlement portion of the program, for which DOE provides information.

This is in stark contrast to some of DOE's original expectations for EEOICPA. Secretary of Energy Richardson, in an April 2000 press release, stated "The Administration's proposal, if enacted into law by Congress, would compensate more than 3,000 workers with a broad range of work-related illnesses throughout the Energy Department's nuclear weapons complex." This was prior to the enactment of EEOICPA, but the release did discuss a program that was very similar to the current law, including lump sum benefits and help in obtaining State workers' compensation benefits. The press release further identified the total program costs for all agencies, including administrative costs and worker benefits, to be about \$120 million annually over the first three years the program was fully operational, declining to about \$80 million per year after the backlog of claims was reduced. The basis for these estimates is not clear, but the implication is that it would take at least three years to clear a 3,000-claim backlog, and then several years beyond that to complete all claims. In fact, expected expenses for all of EEOICPA for all agencies just through fiscal year 2004 is expected to be \$1.5 billion.

DOE's budget projections for Part D in 2001, after the statute was passed, are based on a projection of about 7500 applications to DOE under Part D and 10 years to complete the program. Clearly, DOE expected significantly fewer applications to this program than we are currently receiving, and consequently fewer resources were requested. In fact, we have received nearly three times as many applications as originally projected when budgets profiles were developed.

Despite the fact that thousands more applications have been filed than were expected and despite the cumbersome processes established for Part D, DOE has worked very hard to carry out its Part D responsibilities. This work has occurred while we have also been obtaining and providing to the DOL and HHS the records for thousands of employees who have submitted Part B applications.

The Department has continuously worked to improve our processes. First, because the number of applications was far exceeding our original estimates, we sought in July 2003 and the Congress approved in October the transfer of an additional \$9.7 million in FY-03 money to be used for the DOE's activities in gathering records and processing Part D applications. As we already have discussed with many of you, we soon plan to seek approval for the transfer of more than \$30 million in additional funds in FY-04 to be used for this same purpose. These additional funds will go a long way towards allowing DOE to work off the large backlog of applications for which we are currently gathering records for physician panel review. In fact, we are now averaging 100 cases per week up to physician panel review. I have included statistics on our progress in the Attachment, and you can also see our weekly progress on the DOE Office of Worker Advocacy web site.

Second, several months ago DOE retained the Hays Group, Inc. to critically evaluate our Part D activities and suggest improvements and enhancements that would allow us to more effectively implement the Part D program. The Hays report is final, and is available on the Office of Worker Advocacy web site. I promise that we will work diligently to address the improvements identified in the report. We are also interested in the suggestions of the General Accounting Office (GAO) after it completes its critical review of the Part D program.

Third, the Secretary has directed that I personally take charge of DOE's implementation of its EEOICPA duties. I have recently made changes so that the Office of Worker Advocacy, the office that administers this program within DOE, will report to me directly.

We believe these funding and programmatic initiatives will go far towards expediting the processing of Part D applications that have been filed with DOE. We believe that these approaches are preferable to moving the administration of some parts of the Part D processing work to another agency, as was recently proposed as an amendment to the Energy and Water Appropriations Bill. DOE and its contractors possess the employment and exposure records for Part D applicants, and DOE has spent almost three years carrying out Congress's directive to DOE to develop the processes and procedures to gather records and implement the Part D program. Moving portions of the program will not accelerate the processing of applications, and will, in my opinion, counteract the progress we have made to date.

While we believe that our recent efforts to speed the processing of Part D cases puts us on the right path to accommodate the large number of backlogged claims, we

believe more can be done. Additional resources are certainly required. However, we are also evaluating DOE's Federal Rule that implements Part D to determine whether it might be appropriate to propose changes that could expedite the processing of Part D applications, especially in the area of physician panel reviews.

Finally, and as I noted earlier, the EEOICPA statute itself places a number of constraints and limitations on the Part D process that serve to slow down the pace at which DOE can process applications. A good example is the physician panels. Current statutory requirements may limit the population of physicians below a tenable level for the sufficiently speedy processing of applications through the panels, a problem which may be exacerbated by the Department's Rule requiring three physicians on every panel. We are exploring with other Executive agencies legislative changes that may be needed to make more physicians available for panels, as well as developing possible changes to DOE Rules to best utilize the physicians we have. The statute also caps the level of pay for physician panel members at a level well below the market rate for such services. An initial description of those barriers that may benefit from legislative changes is included in the Attachment.

The statute contains other limitations that have been barriers to the processing of Part D applications. A table listing many of the barriers and possible changes is provided in the Attachment. I am looking for support from this committee as we evaluate the effectiveness of making these changes to deal with these barriers.

I also look forward to hearing any suggestions the next panel may have for improving DOE's implementation of Part D, within the existing statutory constraints and requirements. Various parties sometimes present recommendations to DOE about how its

Part D processes might be changed, but often those recommendations ignore the limitations placed on us by the statute itself. In addition, some of these recommendations seem unaware of where the Department's responsibilities lay, a misperception that I believe is widespread throughout the community of former workers and those interested in their cases. The fact of the matter is that the Department of Energy's responsibilities end, by statute, when the Department provides the Physician Review Panel findings to the worker, and where allowed, direct the contract employer to not contest the findings or claim with State workers' compensation agencies. No benefit is tied to this program, only the advocacy services of the Department. All benefits are determined in accordance with an individual State's workers' compensation rules. We appreciate any suggestions and recommendations from any party that respects the boundaries as set by the Congress.

DOE is committed to carrying out its responsibilities under EEOICPA Part D. We are committed to providing DOE contractor workers with the assistance they deserve under Part D as established by the Congress. In addition, we are committed to working with the Congress, to keep you informed about our progress and to address improvements in DOE's processes and in the statute itself.

I also want to assure all members of this committee that the Department of Energy as an agency and I personally as the Under Secretary of Energy believe that the safety of our workers is our most important responsibility. We do not want to leave an additional trail of injured and ill workers with legacy costs for the taxpayers. This is why I have included some of the safety statistics regarding our current operations in the Attachment. The DOE injury and illness rates have declined to a historic low in 2003. Our rates are less than half of private industry. DOE is one the safest places to work in the country. We

fully intend to continue this performance while striving to improve our methods of protecting our workers, the public and the environment.

At this time, I would be glad to answer any questions you may have.

ATTACHMENT